



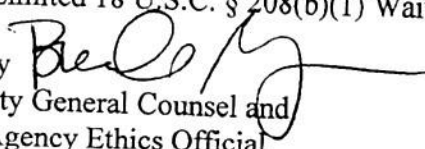
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

FEB 06 2014

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Request for a Limited 18 U.S.C. § 208(b)(1) Waiver

FROM: Brenda Mallory 
Principal Deputy General Counsel and
Designated Agency Ethics Official

TO: Rick Ziegler, Scientist
National Center for Environmental Assessment
Office of Research and Development

You seek an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to participate personally and substantially in a particular matter from which you would be disqualified absent such waiver because of your financial interest in the matter. Specifically, you wish to participate fully and candidly with the Agency regarding possible options regarding future ownership of a specific patent you are pursuing in your personal capacity and in discussions about how best to develop or encourage work on either that patent or closely related issues given EPA's current organizational structure. You already understand that you cannot participate in the Cooperative Research and Development Agreement (CRADA) that is related to the patent.

Your request for a limited waiver is hereby granted. This waiver is limited to discussions about possible acquisition by EPA of the patent rights and also possible options for further development within EPA of the patent itself or closely related issues. Depending on the resolution of those discussions, you may need to seek another waiver in the future.

In the course of your official EPA duties, you had worked on a social media project that, as it happens, involved innovative technology that could be pursued as a patent. In August 2011, EPA sought a provisional patent for that technology, and you continued to be assigned to the project associated with that work. In August 2012, however, EPA declined to pursue a non-provisional patent application. Pursuant to Section 7 of the Federal Technology Transfer Act, legal ownership of the patent reverted to you as the employee-inventor. You then filed for a non-provisional patent in your personal capacity and spent money on certain fees and other costs associated with that filing. In December 2012, you and your management were advised about the financial conflict of interest. Given your disqualifying financial interest, you were recused from further participation on particular matters involving the patent, which included the CRADA

as well as discussions about the patent itself.

You have a financial interest in any royalty payments from the University of North Carolina Chapel Hill (UNC) made to you as an employee-inventor of the technology. Because the technology has been licensed to UNC, the potential for financial gain or loss is predictable. You may also have a financial interest in your investment into the patent at this point. You would not have any imputed interest in UNC or any other company licensing the invention because you have no equity interest in the entities, nor do you hold any position with or consult for them. If, however, in the future you negotiate for or acquire any other disqualifying financial interest, such as a financial interest in a company commercializing the invention, then you will need to cease participating personally and substantially in any particular matter as part of your EPA duties that could affect such financial interest and seek advice from OGC/Ethics.

A criminal statute, 18 U.S.C. § 208(a), prohibits a federal employee from participating personally and substantially in an official capacity in any particular matter in which he has a financial interest if there will be a direct and predictable effect on that interest. However, individual waivers may be granted if his interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of his service to the Government. In making this determination to grant this waiver, I have considered the factors provided in 5 C.F.R. § 2640.301(b). EPA does not know (and cannot without further discussion with you) the dollar value of your investment into the patent at this point, nor can we anticipate the estimate the possible market value of the patent, if granted. Moreover, where an invention is not currently paying royalties, amounts of future royalties from commercialization, if any, are completely unknown. The possibility of future royalties is wholly speculative and the actual amount of any such future interest cannot be determined.

In balancing the potential financial interest against the integrity of your service, EPA notes that your role as the inventor is critical to any substantive discussions that the Agency can have. Although EPA is not able to calculate any credible valuation of the financial interest, we are prepared to grant this limited waiver to further discussions about possible acquisition by EPA of the patent rights and also possible options for further development within EPA of the patent itself or closely related issues.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, at 202-564-1786 if you have any questions regarding this waiver.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C., 20460

OFFICE OF GENERAL COUNSEL

APR 28 2014

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. Sec. 208(b)(1)

FROM: Kevin S. Minoli *KSM*
Acting Principal Deputy General Counsel and
Designated Agency Ethics Official

TO: Susan Hedman
Regional Administrator
Region V

I understand that you have been invited by the President to serve in your official Government capacity on the board of the Ohio River Valley Water Sanitation Commission (ORSANCO) as a federal appointment. Because the financial interests of the organization will be imputed to you under 18 U.S.C. § 208(a), you would be disqualified from participating in any particular matter affecting the organization's financial interest in the absence of a section 208(b)(1) waiver. The United States Congress created ORSANCO in 1936 as a federal-interstate commission dedicated to controlling water pollution in the Ohio River Valley. Though ORSANCO predates the creation of EPA, the interests of ORSANCO and EPA are consonant, as EPA's mission is to protect human health and the environment in the United States. The Office of General Counsel (OGC) therefore concludes that EPA has the statutory authority to permit an EPA employee to serve on the ORSANCO board as part of official EPA duties.

As the Regional Administrator for EPA's Region V office, which has responsibility for the Midwest, you are in the best position to represent the federal environmental perspective. Because you will be serving with ORSANCO in your official capacity and under the ultimate supervision of EPA, your duties at ORSANCO will be carried out in furtherance of the interests of the United States. For that reason, I consider that there is diminished risk to the integrity of the services that EPA and the federal government expect from you. I am therefore writing to grant you an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to serve as a member of the ORSANCO board. In that position, you will be representing the United States Environmental Protection Agency (EPA) in your official capacity.

Please note, however, that this waiver contains certain necessary limitations:

- 1) You cannot participate in any fundraising activities on behalf of ORSANCO;
- 2) You cannot represent ORSANCO or lobby on its behalf before any department, agency, officer or employee of the United States;
- 3) In your position at EPA, you cannot participate in any investigations of the activities of ORSANCO other than as a provider of information or testimony, nor can you participate in developing regulations that would impact ORSANCO or be involved in enforcing regulations pertaining to that organization or decisions to award EPA grants or contracts to ORSANCO; and
- 4) You cannot participate in the solicitation of federal government speakers for any event held or sponsored by ORSANCO.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, at 202-564-1786 if you have any questions regarding this waiver.

cc: Justina Fugh, Senior Counsel for Ethics
Robert Kaplan, Regional Counsel
Ann Coyle, Regional Ethics Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUL - 1 2014

OFFICE OF
GENERAL COUNSEL

TO: Kevin Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

FROM: Jennie Keith
Deputy Ethics Official *vjk 07/01/2014*

RE: Request for Waiver Pursuant to the Criminal Statute, 18 U.S.C. § 208(b)(1) for
Brian Grant

Pursuant to 18 U.S.C. § 208(b)(1), I recommend that you waive the participation prohibition in 18 U.S.C. § 208(a) for Brian Grant. Under § 208(a), the law prohibits an employee from participating personally and substantially in a particular matter which will have a direct and predictable effect on his financial interest. As the DAEO, and after consultation with the Office of Government Ethics (OGE), you may waive this criminal prohibition upon a written determination that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

Mr. Grant has an imputed stock interest in the company, DuPont, due to his spouse's vested beneficial interest in an irrevocable trust. Please note I have already ascertained that his spouse, who is also an OGC attorney, does not present any conflicts issues given the scope of her assigned duties and also that this waiver covers Mr. Grant's participation only, not his spouse. The attributable imputed interest to Mr. Grant is 489.6 shares valued at approximately \$33,000. This interest represents approximately 1.3% of his overall investment portfolio. Mr. Grant is currently recused from participating in any particular matter (both matters of general applicability and specific party) that will affect the financial interests of DuPont because the stock value is above the regulatory *de minimis* thresholds set at 5 C.F.R. § 2640.202.

Currently pending in his office are Significant New Use Rules (SNURs) that may have a direct and predictable effect upon the financial interests of DuPont. Pursuant to the Toxic Substances Control Act, EPA uses significant new use rules (SNURs) in appropriate circumstances to ensure that, once a chemical has been phased out or taken off the market for certain uses, no company will be able to resume manufacturing or processing the chemical for that use without prior notice to the Agency. The potential conflict of interest arises because there are a number of SNURs going through the rulemaking process, and these all involve chemicals that are manufactured by a number of entities, including DuPont.

As the practice group leader for the Toxic Substances Control Act, Mr. Grant oversees all legal issues arising under TSCA. Because of his expertise, the complexity of the upcoming SNURs, and the necessity of having one supervising attorney to ensure consistency in counseling for all related SNURs, it is in EPA's interests for Mr. Grant to participate in the SNURs affecting DuPont's financial interests. Upon reviewing his financial interests, the particular matter, and Mr. Grant's role and participation, I recommend that you determine that Mr. Grant's financial interest is not so substantial as to affect the integrity of the services which the government may expect from him. See background notes for a more complete analysis.

Mr. Grant's participation is not unconditional. Rather, this waiver is limited. EPA will permit Mr. Grant to participate only in particular matters of general applicability – not in any specific party matters – provided that his attributable interest in DuPont's stock itself does not exceed \$50,000 and his aggregated attributable interest for all affected parties does not exceed \$75,000. Should his interests rise above these new threshold values, he has been counseled that he must cease his participation in general applicability matters.

For the above reasons, I recommend that you waive Mr. Grant's disqualification requirement in 18 U.S.C. § 208(a) for his imputed financial interest in DuPont. I have consulted with the Office of Government Ethics on the issuance of this waiver. Please mark your determination below and return to me or, in my absence, to Justina Fugh.

APPROVAL: ☒ The financial interest is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

DISAPPROVAL: ☐

Signature:

Y. S. O.

Date:

7/3/14

Background Notes on the 18 U.S.C. § 208(b)(1) Waiver for Brian Grant

FOIA Exemption 5 Deliberative Process Privilege



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUL 11 2014

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. § 208(b)(1)

FROM: Kevin S. Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

KSQ

TO: Samuel Ziegler
Manager, Watersheds Office, Region 9

I understand that the Administrator of the U.S. Environmental Protection Agency ("EPA") has appointed you to serve in your official Government capacity as the EPA representative to the San Francisco Bay Conservation and Development Commission (the "Commission"). The State of California created the Commission in 1965 in response to widespread public concern over the future of the San Francisco Bay. Comprised of many representatives from State and local governments, the Commission is charged with developing a plan for the long-term use of the San Francisco Bay and regulating development around the Bay while the plan is being prepared. The Commission is the federally-designated state coastal management agency for the San Francisco Bay segment of the California coastal zone. Under this designation, the Commission is empowered to use the authority of the federal Coastal Zone Management Act to ensure federal projects and activities are consistent with the policies of the Bay Plan and with state law. See 16 U.S.C. §§ 1451-1464. The interests of EPA and the Commission are consonant, as EPA's mission is to protect human health and the environment in the United States.

Your appointment to the Commission on behalf of EPA is made pursuant to the State of California's McAtter-Petris Act, which the California State Legislature amended in 1971 to include an EPA representative to serve as a member of the Commission. See California Government Code § 66620(b). As a member, the financial interests of the organization will be imputed to you under 18 U.S.C. § 208(a), and you would be disqualified from participating in any particular matter affecting the organization's financial interests in the absence of a § 208(b)(1) waiver.

As the EPA appointed representative on the Commission, you are serving in your official Government capacity and under the ultimate supervision of EPA. Your duties as a commissioner will be carried out in furtherance of the interests of the United States. For that reason, I consider that there is diminished risk that the integrity of the services that the EPA and the Federal Government expect from you would be affected. Therefore, I am writing to grant you an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to serve, in your official Government capacity, as a member of the San Francisco Bay Conservation and Development Commission.

Please note that this waiver contains certain necessary limitations:

1. You may not participate in any fundraising activities on behalf of the Commission;
2. You may not represent the Commission or lobby on its behalf before any department, agency, officer or employee of the United States;
3. In your EPA position, you may not participate in any investigations of the Commission's activities other than as a provider of information or testimony, nor can you participate in developing regulations that would impact the Commission or be involved in enforcing regulations pertaining to that organization or making decisions to award EPA grants or contracts to the Commission; and
4. You may not participate in the solicitation of federal government speakers for any event held or sponsored by the Commission.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, if you have any questions. Justina can be reached at (202) 564-1786.

cc: Justina Fugh, Senior Counsel for Ethics
Alexis Strauss, Deputy Regional Administrator/Deputy Ethics Official
Steven Jawgiel, Regional Ethics Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

JUL 11 2014

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. § 208(b)(1)

FROM: Kevin S. Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

KSS

TO: Jason Brush
Manager, Watersheds Office, Region 9

I understand that the Administrator of the U.S. Environmental Protection Agency ("EPA") has appointed you to serve as the EPA's alternate representative to the San Francisco Bay Conservation and Development Commission (the "Commission") in your official Government capacity. The State of California created the Commission in 1965 in response to widespread public concern over the future of the San Francisco Bay. Comprised of many representatives from State and local governments, the Commission is charged with developing a plan for the long-term use of the San Francisco Bay and regulating development around the Bay while the plan is being prepared. The Commission is the federally-designated state coastal management agency for the San Francisco Bay segment of the California coastal zone. Under this designation, the Commission is empowered to use the authority of the federal Coastal Zone Management Act to ensure federal projects and activities are consistent with the policies of the Bay Plan and with state law. See 16 U.S.C. §§ 1451-1464. The interests of EPA and the Commission are consonant, as EPA's mission is to protect human health and the environment in the United States.

Your appointment to the Commission on behalf of EPA is made pursuant to the State of California's McAtteer-Petris Act, which the California State Legislature amended in 1971 to include an EPA representative and alternate representative to serve as members of the Commission. See California Government Code § 66620(b). As a member, the financial interests of the organization will be imputed to you under 18 U.S.C. § 208(a), and you would be disqualified from participating in any particular matter affecting the organization's financial interests in the absence of a § 208(b)(1) waiver.

As the EPA appointed alternative representative on the Commission, you will serve in your official EPA capacity and under the ultimate supervision of EPA. Your duties as an alternate commissioner will be carried out in furtherance of the interests of the United States. For that reason, I consider that there is diminished risk to the integrity of the services that EPA and the Federal Government expect from you. Therefore, I am writing to grant you an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to serve, as the need arises, as an alternative member of the San Francisco Bay Conservation and Development Commission.

Please note that this waiver contains certain necessary limitations:

1. You may not participate in any fundraising activities on behalf of the Commission;
2. You may not represent the Commission or lobby on its behalf before any department, agency, officer or employee of the United States;
3. In your EPA position, you may not participate in any investigations of the Commission's activities other than as a provider of information or testimony, nor can you participate in developing regulations that would impact the Commission or be involved in enforcing regulations pertaining to that organization or making decisions to award EPA grants or contracts to the Commission; and
4. You may not participate in the solicitation of federal government speakers for any event held or sponsored by the Commission.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, if you have any questions. Justina can be reached at (202) 564-1786.

cc: Justina Fugh, Senior Counsel for Ethics
Alexis Strauss, Deputy Regional Administrator/Deputy Ethics Official
Steven Jawgiel, Regional Ethics Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

SEP 24 2014

MEMORANDUM

SUBJECT: Request for Waiver Pursuant to the Criminal Statute, 18 U.S.C. § 208(b)(1), for Sarah Mueller

FROM: Justina Fugh
Senior Counsel for Ethics

TO: Kevin Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

Pursuant to 18 U.S.C. § 208(a), executive branch employees are prohibited from participating personally and substantially in a particular matter which will have a direct and predictable effect on their financial interest or those interests that are imputed to them. As EPA's DAEO, you may waive this criminal prohibition upon a written determination that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

The Office of Regional Counsel in Region IX requests an individual waiver for Sarah Mueller, an enforcement attorney, to permit her to participate in all aspects of a global settlement of the Del Amo Superfund site ("site"), in Los Angeles, California, which encompasses 82 parcels in Operable Unit 1 ("OU1"). Attached is a background document that contains enforcement sensitive information subject to deliberative process and attorney client privileges.

In applying the factors set forth at 5 CFR 2640.301(b), please consider in particular the fact that, since 2011, Ms. Mueller has been the only regional attorney assigned to work on this specific party matter. She has extensive knowledge and experience on this complex site. She knows all of the details and nuances of the enforcement approaches taken with respect to the various parties involved, and the strategies being used to address the issues at this large site. Her continued participation and involvement in all aspects of this case are vitally important and necessary to the Agency.

At the present time, the Agency is aware of facts that create a conflict of interest for Ms. Mueller's imputed interests pursuant to 18 U.S.C. § 208. After careful consideration of the facts, which include enforcement sensitive and privileged information, I recommend that you approve this waiver to allow Ms. Mueller to participate in all aspects of a global settlement of the Del Amo Superfund Site ("Site") at this time. As the situation evolves and additional facts become known to the Agency, I will revisit with the Region and the Office of Government Ethics ("OGE") the terms of this waiver. As necessary, we will make changes to add any and all appropriate limitations.

I have consulted with the OGE on the issuance of this waiver and the possible need to revisit its terms in the future. Please mark your determination below and return to me.

APPROVAL: ☒ The financial interest is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

DISAPPROVAL: ☐

Signature:

Y. S. Q.

Date:

9/24/14



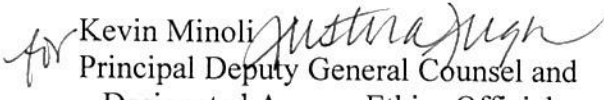
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

APR 29 2015

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Determination Regarding A Request for a 18 U.S.C. Sec. 208(b)(1) Waiver

FROM:  Kevin Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

TO: Robert Moyer
Deputy Regional Counsel
Region 9

I am writing in response to your request for an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to complete your detail assignment as the Director of Submissions and Enforcement Matters Unit (SEM) at the Commission for Environmental Cooperation (CEC) even though you will be offered this position on a permanent basis. You began this assignment in January 2015 and since April 6, 2015, have been recused from participating in any CEC matters. Because of the concern about a possible conflict of interest, the Office of General Counsel referred this matter to the Inspector General (IG). The IG declined to open an investigation and did not refer this matter to the Department of Justice.

I want to begin by stressing the importance of the Federal laws regarding conflicts of interest of Federal employees. These laws are critical to ensuring public confidence that government employees are working with the interests of the public in mind, and are not swayed by their personal interests. Waiving one of these provisions should be done rarely, and only when granting the waiver is clearly in the interest of the United States.

You seek an individual waiver to allow you to continue to work on particular matters that affect the CEC through June 30, 2015, even though the CEC intends to offer you permanent employment at the CEC during this time. Based upon the very unique circumstances of this situation, I am granting you a time-limited waiver of the requirements of 18 U.S.C. § 208(b)(1).

Below I describe my application of Federal law and guidance from the Office of Government Ethics to the specific facts of your request. Because my decision relies on the unique facts of this case, I first explain the factual situation at hand.

The Commission for Environmental Cooperation

The entity with which you have a conflict of interest under 18 U.S.C. § 208(b)(1) is the

CEC. The CEC is an inter-governmental organization that was voluntarily created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC), which was the environmental side accord to the North American Free Trade Agreement (NAFTA). The three governments chose to establish the CEC as an organization to help their countries cooperate on environmental issues of continental concern. The CEC is led by a Council comprised of the highest ranking environmental officials from each country. Currently, the United States is represented on the Council by EPA Administrator Gina McCarthy, or her designated alternate, EPA Deputy Assistant Administrator Jane Nishida. Both Administrator McCarthy and Ms. Nishida serve as members of the CEC Council as part of their official responsibilities. They further the United States' commitment to support the work of the CEC through funding and personnel.

In addition to providing expertise and personnel to the CEC, the United States Government provides substantial funding to the CEC. For example, in 2011, the most recent year for which official CEC Annual Reports are publicly available, the United States provided more than \$2.2 million in funding to the CEC. The United States provided this funding as part of its commitment to support the CEC as an inter-governmental organization designed to help achieve the United States' environmental objectives throughout North America.

Based on these facts, I conclude that the CEC is an entity that is distinguishable from the other entities for which we usually adjudicate conflicts of interest. While the CEC's unique status as an inter-governmental organization does not render Federal conflict of interest laws inapplicable, it does weigh heavily in my decision to grant a waiver in this case.

Your Role As It Relates to the CEC

Your position of record is as the Deputy Regional Counsel, Office of Regional Counsel, EPA Region 9, San Francisco, California. In that role, you serve as the second highest ranked legal counsellor to the EPA's regional office. While EPA Region 9's areas of responsibility include states that border Mexico, your position within the Region includes no official responsibilities related to the CEC. While it is theoretically possible that a project that comes before you for advice would have an effect on a member of the CEC, in those projects you would almost certainly be in a position of providing counsel to a decision-maker, as opposed to being the decision-maker yourself.

In 2014, you were approached, unsolicited, by a Senior Executive at the EPA about the possibility of EPA assigning you to work at the CEC for a six month period as a "detail" assignment. The CEC had a critical need to fill a particular position, and asked an EPA executive who had previously been detailed to the CEC for a recommendation of another EPA employee who could serve. The CEC had previously tried to fill the position but was unsuccessful, and so sought the assistance of an EPA employee in identifying a person who could be temporarily assigned to fulfill those duties while the CEC undertook a second effort to recruit a permanent employee.

The position at issue is the Director of the Submissions and Enforcement Matters Unit

(SEM). Under the NAAEC, the North American public may submit assertions that a member country is failing to effectively enforce its environmental laws. This process is known as the "Submissions on Enforcement Matters" or SEM. The role of the Director of the SEM Unit is to manage all submission and enforcement matters and is responsible for ensuring the timely receipt, analysis, and processing of individual submissions, and for the preparation and submission to the CEC Council of any resulting factual records.

After learning of the CEC's need and your willingness to serve, EPA management considered whether detailing you to the CEC to serve as the Acting Director of the SEM Unit was in the United States Government's interest. Senior EPA managers in the Region and Headquarters concluded that it was indeed in the United States Government's interest to detail you to the CEC, and, pursuant to 5 U.S.C. § 3343, you have been detailed to the CEC to serve as their acting director of the SEM process since January 15, 2015. EPA pays your salary and benefits, and you remain an EPA employee subject to the federal conflict of interest statutes codified at Title 18 of the U.S. Code and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635.

Your current responsibility, as agreed to by the EPA and the United States Government in its decision to approve this detail assignment, is to complete assignments given to you by the CEC, and on behalf of the CEC. The United States Government has authorized you to work for the benefit of the CEC during the period of your detail. During your detail you have not retained any responsibilities associated with your position of record at the EPA.

The Financial Interest at Issue

I find that you began your temporary assignment with the full intention of returning to the EPA at the expiration of the six month assignment. For example, you owned property in San Francisco when you accepted the assignment, and continue to own property in San Francisco today. You also made specific commitments regarding assignments associated with your position of record after the expiration of your temporary assignment.

According to your explanation of the facts,¹ approximately one month into your assignment, a CEC official approached you to inquire whether you would be interested in serving in the position on a permanent basis. At that time, you indicated that you were not interested and, therefore, no violation of the conflict of interest provisions occurred at that time. After your initial rejection of the offer of potential future employment, however, you were approached again, this time with additional details of the compensation package that is associated with the position. Compensation for the position is set by agreement of the governments of the United States, Canada, and Mexico. While there is a pay range for the particular position, the variation within that range is quite small. Based on your expression of

¹ The facts concerning conversations between you and CEC officials regarding the potential of your future employment at the CEC are the facts as you have relayed them the OGC Ethics. In light of your long history of service as an EPA employee, I find it reasonable to accept your representations of those facts as accurate. Should it ever be determined that any of the facts relayed by you and described herein are inaccurate, the decision rendered today would be invalidated, and a new decision would have to be reached.

interest following this second overture, the CEC reached out to the United States government and expressed its intent to offer you the position on a permanent basis. That letter of intent is dated April 1, 2015. According to the rules governing the CEC, the assent of the United States Government is required prior to the CEC's formally offering you the position.

Your Efforts to Obtain and Abide By Ethics Counselling

In March 2015, you contacted Sylvia Quast, Regional Counsel for EPA Region 9, who is both your immediate supervisor and a Deputy Ethics Official. You contacted Ms. Quast and explained that senior managers within the CEC had expressed an interest in offering you a permanent position at the CEC, and that you had expressed an openness to that offer. At no time during that conversation did Ms. Quast identify any ethical considerations regarding seeking employment, negotiating for employment, or post-employment. She also did not recommend that you speak to the regional ethics counsel in Region 9 nor to the Office of General Counsel's ethics team. I find that you did provide an agency ethics official with all of the relevant facts and that you relied in good faith upon the advice, or lack of advice, that you received. 5 C.F.R. § 2635.107.

On April 1, 2015, Dr. Irasema Coronado, Executive Director of the CEC, wrote to the Council members, including EPA, regarding her intention to offer you the position permanently and seeking concurrence in that decision. Upon receipt of the letter, EPA's Office of International and Tribal Affairs (OITA) sought the guidance of the Office of General Counsel/Ethics (OGC/Ethics), which identified the potential ethics concern. On April 6, 2015, upon the advice of OGC/Ethics you immediately recused yourself from particular matters regarding the CEC while we evaluated the situation. Because the EPA had assigned you to work on behalf of the CEC, the only way to effectuate that recusal was to not report to work. Since the date you received advice from OGC/Ethics, you have voluntarily taken annual leave from your work responsibilities.

The Legal Standard

Pursuant to 18 U.S.C. § 208(a), you as an executive branch employee are prohibited from participating personally and substantially in an official capacity in particular matters in which you have a personal financial interest or in which certain persons or organizations with which you are affiliated have a financial interest. The fact that you have been detailed to another organization does not render this prohibition inapplicable. The statute is intended to prevent employees from allowing personal interests to affect their official actions and to protect government processes from any actual or apparent conflict of interest.

Specifically, the statute states:

Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer,

or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

For the purposes of this provision, the financial interests of the CEC are imputed to you because you are negotiating for employment with them and because you will, we expect, soon receive a job offer from them. Absent a waiver, you are prohibited from participating in any particular matter that affects CEC's financial interests as well as your own employment opportunity.

18 U.S.C. § 208 provides for the possibility of a waiver of the requirements of the provision:

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

You seek a waiver under this provision.

Your Request for a Waiver

We anticipate that the SEM Unit Director position will be offered to you on a permanent basis on or about April 23, 2015, although the position will not be available formally until the fall of 2015. You seek a waiver from the financial conflict of interest statute for the limited period of April 23 to June 30, 2015, when your detail ends and you will return to EPA. This waiver will permit you to perform the responsibilities EPA and the United States Government authorized you to perform when you were detailed to the CEC.

Application of Applicable Law to Your Request for a Waiver and Decision

As EPA's Designated Agency Ethics Official, I am authorized to waive the criminal prohibition upon a written determination that the financial interest involved is not so substantial

as to be deemed likely to affect the integrity of the service that the Government may expect from you, the employee. Before I render a decision I must first, pursuant to 5 C.F.R. § 2640.303, consult with the Office of Government Ethics, where practicable, which I have done.

As stated at the outset of this memorandum, Federal conflict of interest laws are critical to ensuring Federal employees have the interests of the United States – and not their personal interests – in mind when performing their responsibilities as a Federal employee. If Federal law identifies a set of facts as presenting a conflict of interest for a Federal employee, that is a very serious matter and the employee and agency ethics officials should move swiftly to bring the conduct of the employee into compliance with Federal law.

In this situation, I conclude that your negotiating for employment with the CEC while you remain an EPA employee does present a financial conflict of interest of the sort prohibited by 18 U.S.C. § 208, absent a waiver or exception. The CEC's potential offer of permanent employment creates a substantial financial interest for you in the CEC.

The statute's prohibitions are not absolute, however, and specifically authorize an agency official to waive those prohibitions in certain limited circumstances. At EPA, I am the Designated Agency Ethics Official and, as such, have the authority to grant such a waiver. As stated above, I am required, if possible, to consult with the Office of Government Ethics before rendering my decision.

Having applied the applicable law and Office of Government Ethics guidance to the unique facts of this case, I have concluded that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from you, the employee, during the period of April 23, 2015 through June 30, 2015, and, therefore, grant you a waiver from the prohibitions contained in 18 U.S.C. § 208 during that time period. This waiver does not address any of the post-employment obligations pursuant to 18 U.S.C. § 207 that you will need resolve, nor any of your own state bar obligations.

Legal Analysis

As articulated in the statute itself and guidance from the Office of Government Ethics, the key question for a deciding official is whether the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee. In applying the factors articulated by the Office of Government at 5 C.F.R. § 2640.301(b), I find that:

- You are the person whose financial interest is involved;
- You are negotiating for employment with and anticipate getting a job offer from the CEC, where you are currently on detail;
- The EPA pays your salary and benefits, while the CEC pays for your travel and lodging in Canada; and
- The disqualifying financial interest is your salary now and your future salary as the Executive Director, and has significant value in relationship to your assets.

I have considered these factors carefully. I find that the potential offer of employment with the CEC creates a financial conflict of interest for you. In addition, I find that the financial interest – permanent employment – is a substantial financial interest for you.

Under the statute, therefore, the only remaining question is whether the interest “is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee.” In considering this aspect of the statutory test, the specific, unique facts of your situation are particularly relevant. Currently, the EPA and the United States Government have assigned you to work solely on projects of the CEC for the benefit of the CEC. The “integrity of the services” that the EPA expects from you in your current position is to fulfill your duties to the best of your ability to benefit the CEC. In assigning you to work on behalf of the CEC, the United States placed no limitations on your performance of your duties. Notably, there was no limit on the performance of those duties even if those duties were not fully aligned with the interests of the United States on a particular matter.

In light of the fact that the United States Government has assigned you under specific statutory authority to work on the CEC’s behalf, and expects that the integrity of the services you provide will be your zealous advocacy on the CEC’s behalf, I conclude that your financial interest in future employment at the CEC is not likely to affect the integrity of the services which the United States Government and EPA expect from you. Under the plain language of the statute, therefore, I am granting this time-limited waiver.

I have also considered guidance offered by the Office of Government Ethics and concluded that a waiver is consistent under that guidance when the specific facts are considered. See OGE advisory, DO-07-006 (February 23, 2007). Many of the factors identified in this advisory OGE consider the significance of the financial interest and the employee’s role in particular matters, and some of those might appear to counsel against a waiver in this instance.

On the other hand, the OGE advisory does identify certain factors and considerations that are particularly relevant here and that counsel in favor of a waiver. For example, Factor 7 at page 11 encourages a decision-maker to consider the “need for the employee’s services in the particular matter.” Here, EPA and the United States Government determined that your participation in CEC matters was in the interest of the United States when they detailed you, specifically to this position. Furthermore, there are no other EPA employees who are currently in a position to perform these duties that you perform.

The OGE advisory provides specific direction with regard to waiver requests that involve an employee negotiating for employment. OGE identifies as “one major concern” the possibility that the “employee might try to ingratiate himself with his prospective employer by taking a favorable action on a particular matter.” See p. 18. In a typical situation, this concern can be clearly presented: an enforcement official authorized to decide a penalty for a company could be influenced by a financial interest in future employment with that company. In your situation, however, the EPA and the United States Government have already assigned you to work on behalf of and to the benefit of the CEC. The government already expects you to serve the CEC

fully and zealously, conduct which by its nature will ingratiate you to the Commission. Because that is the expectation of EPA and the United States Government – and, in fact, what the EPA and the government have directed you to do – I cannot identify a situation in which your interest in potential future employment would affect the integrity of the services that we already expect you to provide.

In addition, I have considered the fact that the United States – beyond EPA -- is keenly interested in and supportive of your taking the position of Director of the Submissions and Enforcement Matters Unit. In fact, we expect that the State Department will be receptive to granting you the necessary designation under 5 C.F.R. § 2641.301(a)(2)(ii) to excuse you from any post-employment restrictions. EPA fully understands that, in your detail, you are acting on behalf of another governmental entity as our emissary and at our expense. You are in effect serving the United States' interests in furtherance of our commitment under the NAAEC and NAFTA. Our interests are in fact parallel with the interests of the CEC and are served well and effectively by your current service and your anticipated service. Therefore, I am granting this request for an individual waiver. I find that the financial interest is not so substantial as to be deemed likely to affect the integrity of the service that the United States – not just EPA – may expect from you.

Conclusion

Based on the unique factual circumstances of your request, including the United States' relationship with the CEC, EPA's current expectations that you are performing work to benefit the CEC, and the time-limited nature of the request, I hereby grant the request for a waiver under 18 U.S.C. Sec. 208(b)(1). As required, I have consulted with the Office of Government Ethics, and that office has no objection to the issuance of this waiver.

This waiver is limited in nature and permits only your official participation in particular matters that arise at CEC that you would be participating in as part of your assigned duties as Director of the Submissions and Enforcement Matters Unit. This waiver does not permit your participation in any other particular matter that would have a direct and predictable effect on the financial interests of CEC, including particular matters that you may be asked to work on in an official capacity at EPA, other than those described above. This waiver will automatically become void and cease to be effective upon termination of your detail. You are aware that this waiver will cease to be effective on July 1, 2015.

You have agreed that for the duration of your detail, you will not participate or assist in any matter at CEC involving requests to obtain any grants, contracts, cooperative agreements, technical assistance agreements, collaborative agreements, or other support, including additional personnel and equipment, from the EPA. This limitation does not prohibit you from requesting the expenditure of funds necessary to your conducting the affairs of CEC or requesting that official travel funds be spent or other government resources be utilized to permit you to conduct the affairs of the organization.

You also understand that you remain a Government employee for all purposes while on detail, and remain subject to the Standards of Ethical Conduct for Executive Branch Employees, 5 C.F.R. Part 2635, and the criminal conflict of interest statutes, 18 U.S.C. §§ 203, 205, 207, 208, and 209, as well as other applicable laws. If you have questions about whether a certain matter is covered by this waiver, or whether an action you may take while on detail implicates the ethics laws, you are directed to promptly seek assistance from Justina Fugh, Senior Counsel for Ethics, or me.

Finally, pursuant to 5 C.F.R. § 2640.304, a copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2634.603. In making this waiver publicly available, certain information may be withheld in accordance with 5 C.F.R. § 2640.304 and 5 U.S.C. § 552.